

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs April 24, 2008

SUSAN C. LOVVORN (NOW REED) v. DANA L. LOVVORN

**Appeal from the Circuit Court for Rutherford County
No. 45966 J. Mark Rogers, Judge**

No. M2007-01834-COA-R3-CV - Filed: June 4, 2008

Ex-husband was incarcerated for criminal contempt based upon his failure to pay child support as ordered by the court. He appeals the trial court's determination that he is not entitled to good time credit pursuant to Tenn. Code. Ann. § 41-2-111(b). We affirm the decision of the trial court that Tenn. Code Ann. § 41-2-111(b) does not apply to criminal contempt convictions arising from a civil matter.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., J., and RICHARD H. DINKINS, J., joined.

Tony L. Maples, Murfreesboro, Tennessee, for the appellant, Dana L. Lovvorn.

Susan C. Lovvorn, Statesboro, Georgia, Pro Se.

OPINION

Dana Lovvorn and Susan Lovvorn were married on May 20, 1992, and divorced on September 24, 2002, pursuant to a final decree entered on November 8, 2002. Incorporated in the final decree was a parenting plan concerning the parties' one child. Ms. Lovvorn was named the primary residential parent, and Mr. Lovvorn was ordered to pay child support in the amount of \$147.20 per week.

In July 2003, Ms. Lovvorn filed a contempt petition based on Mr. Lovvorn's alleged failure to pay child support and to comply with other orders contained in the final divorce decree. On July 25, 2003, Mr. Lovvorn was found to be in criminal contempt and was sentenced to sixty (60) days in jail. On July 28, 2003, Mr. Lovvorn was released from jail after paying his child support

arrearage. He was put on unsupervised probation, subject to certain conditions: Mr. Lovvorn was ordered to pay his remaining defaulted obligations (payment of marital debts and Ms. Lovvorn's attorney fees) in four consecutive installments and to supply Ms. Lovvorn with documentation of a life insurance policy in accordance with the final decree.

On July 27, 2006, Ms. Lovvorn, now Ms. Reed, filed the petition for contempt at issue in this appeal. A hearing was held on February 12, 2007. As to the matters previously addressed by the court in its order of July 28, 2003, the court found that Mr. Lovvorn still had not paid all of the marital debts and that life insurance was still required. As to matters arising after July 25, 2003, the court found that Mr. Lovvorn was again in arrears on child support in the amount of \$14,315.32. The court awarded Ms. Reed a judgment against Mr. Lovvorn for the child support arrearage and for an unpaid medical bill in the amount of \$10.00. The court further found that Mr. Lovvorn was guilty of willful criminal contempt pursuant to Tenn. Code Ann. § 29-9-103 for failure to pay child support. Based upon its finding that "there have been fourteen months since July 25, 2003, during which [Mr. Lovvorn] has willfully failed to pay child support as ordered by this Court, in spite of his ability to do so," the court found Mr. Lovvorn guilty of fourteen (14) separate counts of criminal contempt and sentenced him to 140 days (ten days per count) in jail, "day for day."

On June 12, 2007, Ms. Reed filed a Motion for Immediate Attachment of Respondent to Serve Balance of Sentence. According to this motion, the sheriff released Mr. Lovvorn after he had served only 105 days of his sentence. After a hearing on June 22, 2007, the court entered an order finding that the sheriff had released Mr. Lovvorn early for "good behavior" pursuant to Tenn. Code Ann. § 41-2-111(b). Citing *State v. Wood*, 91 S.W.3d 769, 776 (Tenn. Ct. App. 2002), the court found that this statute "does not apply to a defendant convicted of criminal contempt arising out of a civil matter." The court therefore ordered that Mr. Lovvorn serve the remainder of his sentence with no credits for good behavior. The order was stayed to allow Mr. Lovvorn to file an appeal.

Analysis

On appeal, Mr. Lovvorn presents a single issue: whether Tenn. Code Ann. § 41-2-111(b) applies to a defendant convicted of criminal contempt arising from a civil matter.¹ Because this is a legal question, the trial court's conclusion is not entitled to Tenn. R. App. P. 13(d)'s presumption of correctness on appeal. We will review the issue de novo and reach our own independent conclusions. *King v. Pope*, 91 S.W.3d 314, 318 (Tenn. 2002).

Tenn. Code Ann. § 41-2-111(b) provides, in pertinent part:

Each such prisoner who has been sentenced to the county jail or workhouse for any period of time less than one (1) year on either a misdemeanor or a felony, and who behaves uprightly, shall have deducted from the sentence imposed by the court time equal to one quarter (1/4) of the sentence.

¹The appellee did not file a brief on appeal.

In the present case, Mr. Lovvorn was found in criminal contempt of court pursuant to Tenn. Code Ann. § 29-9-103, which provides that contempt is punishable by fine, imprisonment, or both and that, “[w]here not otherwise specially provided, the circuit, chancery, and appellate courts are limited to a fine of fifty dollars (\$50.00), and imprisonment not exceeding ten (10) days, and, except as provided in § 29-9-108, all other courts are limited to a fine of ten dollars (\$10.00).” Tenn. Code Ann. § 29-9-102 delineates the cases for which a court has the power to inflict punishment for contempt of court, including “the willful disobedience or resistance of any officer of the such courts, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command of such courts.”

The question of the applicability of Tenn. Code Ann. § 41-2-111(b) to a person incarcerated for criminal contempt pursuant to Tenn. Code Ann. §§ 29-9-102 and 29-9-103 has been previously addressed by this court. In *State v. Wood*, the court held that the provisions of Tenn. Code Ann. § 41-2-111(b) allowing “a misdemeanor to earn good conduct credits while serving time in a local jail do not apply to a defendant convicted of criminal contempt arising out of a civil matter.” *Wood*, 91 S.W.3d at 776 (citations omitted). The court reasoned that “[t]he possible punishment is already so limited (a \$50 fine and/or ten days in jail) that the legislature could hardly have intended to mandate a further reduction.” *Id.* at 776 (citations omitted).

As discussed by the court in *Wood*, criminal contempt is treated as a quasi-criminal offense for some purposes, but is not treated the same as other crimes for other purposes. *Id.* at 773. Criminal contempt “is somewhat peculiar because such a charge encompasses aspects of both criminal and civil law.” *Moody v. Hutchison*, 159 S.W.3d 15, 27 (Tenn. Ct. App. 2004). For example, criminal contempt must be proven beyond a reasonable doubt, and constitutional provisions prohibiting double jeopardy may apply. *Ahern v. Ahern*, 15 S.W.3d 73, 80-81 (Tenn. 2000); *Shiflet v. State*, 400 S.W.2d 542, 544 (Tenn. 1966). A defendant is not, however, entitled to a jury trial when tried for criminal contempt pursuant to Tenn. Code Ann. § 29-9-102. *Ahern*, 15 S.W.3d at 82. Unlike with other crimes, “[p]rosecutions of criminal contempt ‘are not intended to punish conduct proscribed as harmful by the general criminal laws. Rather, they are designed to serve the limited purpose of vindicating the authority of the court.’” *Black v. Blount*, 938 S.W.2d 394, 402 (Tenn. 1996) (quoting *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 800 (1987)).

We see no reason to overturn our decision in *Wood*. The judgment of the trial court is affirmed. Costs of appeal are assessed against the appellant, for which execution may issue if necessary.

ANDY D. BENNETT, JUDGE